Petition

81-570 No.

Office - Supreme Court, U.S.
FILED
SEP 28 1981
ALEXANDER L. STEVAS
CLERK

In The

Supreme Court of the United States

October Term, 1981

TERRELL N. ROBERTS, III,

Petitioner,

vs.

THE STATE OF MARYLAND,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND

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QUESTIONS PRESENTED

1. Petitioner was a lawyer representing a defendant in a criminal case in state court. Did summary contempt proceedings against petitioner for arriving fifteen minutes late for court deny him due process of law where petitioner's actions did not pose a serious, open threat to orderly procedure and where there was no need for immediate judicial action?

2. Was petitioner denied a fair and impartial tribunal when the offended member of the court was also petitioner's judge?

3. Was petitioner denied due process of law where the trial judge refused to allow petitioner to produce testimony of witnesses to show that his actions did not interrupt or interfere with court order?

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No.

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TERRELL N. ROBERTS, III,

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vs.

THE STATE OF MARYLAND,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND

OPINIONS BELOW

On June 3, 1980, the Circuit Court for Prince George's County convicted petitioner Terrell N. Roberts, III, of contempt of court. Petitioner appealed his conviction to the Court of Special Appeals of Maryland. The Court of Special Appeals affirmed the judgment of the Circuit Court for Prince George's County and issued its opinion dated March 2, 1981. Petitioner petitioned the Court of Appeals of Maryland for a writ of certiorari. On June 29, 1981, the Court of Appeals of Maryland denied the petition.

JURISDICTION

Title 28, United States Code, Section 1257, 84 Stat. 590 (1948) confers jurisdiction upon this Honorable Court to review the decisions of the courts below by writ of certiorari.

CONSTITUTIONAL PROVISIONS AND RULES INVOLVED

The constitutional provisions involved herein are: the Sixth Amendment and the Fourteenth Amendment, Section 1 of the United States Constitution; Maryland Rules of Procedure, P1, P3 and P4.

STATEMENT OF THE CASE

Petitioner, a member of the Bar of the State of Maryland, was held in direct contempt on June 3, 1980, in the Circuit Court for Prince George's County, Maryland. Petitioner was held in contempt for appearing fifteen (15) minutes late for court, at which time Judge Howard S. Chasanow found petitioner in direct contempt and imposed a fine of fifty dollars.

Petitioner arrived late for court on June 3, 1980, due to a conflict in his schedule. On the same morning he also appeared for another client in the Circuit Court for Anne Arundel County in Annapolis, Maryland. The conflict in petitioner's schedule arose on April 28, 1980. On this date the assignment office for the Circuit Court for Prince George's County called petitioner's office to schedule a trial date in *State v. Todd Ricardo Mines*, a criminal case; petitioner was counsel of record for the defendant Mines. Petitioner's secretary cleared a date of June 3, 1980. One or two hours later, petitioner, who was in the Prince George's County courthouse, discovered that his secretary had cleared a trial date which conflicted with a trial date for one of his other

criminal cases in Anne Arundel County, Maryland. Petitioner went straight to the clerk's office to reschedule the trial date. The clerk told petitioner that a trial date could not be changed without a motion and order of court. On May 8, 1980, petitioner filed a motion for continuance. The prosecutor assigned to the case told petitioner that she would not oppose the motion.

The motion for continuance came into the hands of Judge Howard Chasanow for a ruling. On May 13, 1980, the judge's secretary phoned petitioner and asked him to obtain from his client a statement waiving his right to claim a denial of his right to speedy trial occasioned by the continuance. Petitioner told the judge's secretary that it was practically impossible to secure the waiver. Mines, who was in a penitentiary in Baltimore, Maryland, was not responding to petitioner's letters and was wont to waive any of his rights from much experience in the criminal justice system.

Approximately one week before the trial date, petitioner called Judge Chasanow to find out what action he was going to take on the motion for continuance. Petitioner told Judge Chasnow that a plea bargain had been reached in the Anne Arundel case and that he would only be delayed shortly in appearing in court on June 3, 1980. Judge Chasanow said that if he were the trial judge on the day of trial, he would have "no problem" but suggested petitioner try to continue the Anne Arundel case.

Afterward petitioner considered the futility of trying to continue the Anne Arundel case: it was older than the *Mines* case and had already been continued twice. Additionally, his client in the Anne Arundel case wanted to enter his plea and be sentenced on June 3, 1980 and probably did not want a postponement. Petitioner made the decision to go to Anne Arundel County on June 3rd, handle the matter there as expeditiously as possible and then go to Prince George's County.

On June 3, 1980, petitioner's secretary called the judge's office before 9:00 A.M. and left a message that petitioner was going to be late, but no more than one hour late.

Petitioner arrived in Anne Arundel County Circuit Court at 8:30 A.M. Petitioner determined that the judge in charge of his case could not take the plea and sentencing before 9:30 A.M. Petitioner's client and his local counsel Mr. Stephenson arrived at 9:15 A.M. This client had initially retained Mr. Stephenson but later retained petitioner as his counsel. Since that time, Mr. Stephenson had minimal involvement in the case. Petitioner explained the details of the plea bargain agreement and contemplated sentence. When he was satisfied that Mr. Stephenson could handle the hearing in his absence, petitioner departed at 9:40 A.M. for court in Prince George's County where his case was scheduled for 10:00 A.M. Before leaving Anne Arundel County Courthouse, petitioner called the prosecutor in Prince George's County and advised her that he was leaving Annapolis and expected to arrive in court in thirty minutes.

At 9:30 A.M. on June 3, 1980, Judge Chasanow began his schedule of cases, which included criminal sentencings and motions. Judge Chasanow also had criminal trials which were scheduled for 10:00 A.M. Because a lawyer needed more time to read a pre-sentence report, Judge Chasanow had recessed until 10:00 A.M. At 10:00 A.M. Judge Chasanow returned to the bench. Instead of returning to the sentencing hearings, he called the trial docket. The judge called petitioner's case along with others. After calling the docket, Judge Chasanow resumed the sentencing hearings which were originally scheduled for 9:30 A.M.

At 10:15 A.M., petitioner arrived in court and Judge Chasanow was still occupied with a sentencing. The judge

immediately ordered petitioner to find the prosecutor in his case and return to the courtroom. Judge Chasanow finished the sentencing before him and called petitioner to the bench and summarily adjudged him in contempt of court.

Petitioner filed a motion for new trial in which he questioned the court's constitutional authority to act summarily. Petitioner contended that his tardiness caused no interruption of court order and that there was no immediate necessity for summary action. Petitioner also filed a motion to offer testimony of witnesses to support his contention that there was no interruption of court order. Judge Chasanow denied both these motions.

Petitioner's brief to the Court of Special Appeals of Maryland raised these points and the second question presented in this petition. The Court of Special Appeals of Maryland did not address the first and second questions presented in this petition although they were raised in his brief. With reference to the third question presented in this petition, the Court of Special Appeals of Maryland ruled that Judge Chasanow did not abuse his discretion in denying the motion to offer testimony; however, the court stated no reasons for its ruling.

Petitioner petitioned the Court of Appeals of Maryland for a writ of certiorari to review the decision of the Court of Special Appeals of Maryland. The first and second questions were raised in petitioner's petition to that court. The Court of Appeals denied the petition on June 29, 1981 on the sole grounds that petitioner had made no showing "that review by certiorari is desirable or in the public interest."

REASONS FOR GRANTING THE WRIT

I.

Summary contempt proceedings denied petitioner due process of law because there was no interruption of court order and no necessity to forego petitioner's rights to notice, an opportunity to prepare a defense, a hearing, right to counsel, and other constitutional procedural safeguards.

A criminal charge cannot be prosecuted without affording the accused the procedural safeguards erected by the Bill of Rights. In a summary contempt proceeding, there is no concern for the procedural rights of the accused: there is no notice of the charges, no opportunity to prepare a defense and secure counsel, no trial of the issues and in some cases no fair and impartial tribunal because the offended party is also the judge. Because the power to summarily punish for contempt results in the derogation of such fundamental rights, it "always, and rightly, is regarded with disfavor." *Sacher v. United States*, 343 U.S. 1 (1952). This Court has held that the exercise of the summary contempt power runs afoul of the Due Process Clause of the United States Constitution unless restricted to very limited and exceptional cases. Such proceedings are only proper in cases where the action of the alleged contemnor poses an open, serious threat to orderly court procedure that instant, and summary punishment, as distinguished from due and deliberate procedures, is necessary. *Harris v. United States*, 382 U.S. 162 (1965); *Cooke v. United States*, 267 U.S. 517 (1925). Instant judicial action is only necessary "where immediate corrective steps are needed to restore order and maintain the dignity and authority of the court." *Johnson v. Mississippi*, 403 U.S. 212 (1971).

Petitioner's conduct did not pose an open, serious threat to orderly court procedure. Judge Chasanow did not call petitioner's case for trial before petitioner arrived in the courtroom. Affidavits of petitioner and another lawyer in the courtroom, as well as a transcript of the call of the docket, show that Judge Chasanow merely called petitioner's case, along with others scheduled for trial as part of the general call of the docket. After calling the docket, he resumed a criminal sentencing with which he was occupied before 10:00 A.M. When petitioner arrived in court at 10:15 A.M., Judge Chasanow was still engaged in a criminal sentencing. Thus, petitioner's arrival did not delay the court in any way, moreover, Judge Chasanow knew of petitioner's whereabouts and knew of the conflict in his schedule. Petitioner had called Judge Chasanow's office that morning to let the judge know of his expected time of arrival.

It should also be noted that the State's chief witnesses were absent at 10:00 A.M. Petitioner's investigation revealed that these witnesses did not know they were supposed to appear in court. The witnesses were later notified, but did not appear in court until the afternoon of June 3rd.

The failure of a lawyer to appear for court is not a proper subject for the exercise of summary contempt power. Very rarely will there be a case where a formal hearing is unnecessary and the court can move directly to punish for contempt. A lawyer who appears for court six hours late may be innocent of any contemptuous disregard for the court; he may have valid reasons for being late. Another lawyer who desires to sleep late in the morning acts contemptuously even if he is only six minutes late. In other words, the facts and circumstances underlying the lawyer's conduct must be scrutinized with care. A summary proceeding is not adequate enough to assure that the lawyer will not be unfairly convicted of contempt. In the case at bar, petitioner was doing his level best to represent two clients both of

whom required his services in different courts that morning. He also tried to resolve the conflict in his schedule with the court. It seems that the trial judge could have easily accommodated petitioner's schedule. If a formal hearing had been granted to petitioner, the court would have had more information upon which to exercise the contempt power. Petitioner deserved to have the facts of his case scrutinized with more care.

Absent from the entire record of this case is any evidence to show a compelling need for instant action against petitioner. This Court has said many times that the limits of the power to punish for contempt are "the least possible power adequate to the end proposed." *Harris v. United States, supra.* If petitioner's actions were contemptuous, then the least possible power adequate to punish him would have been to employ constructive contempt procedures under Rule P4 of the Maryland Rules of Procedure, Annotated Code of Maryland (1978 Edition). These procedures would have afforded petitioner due process of law and at the same time served the purpose of prosecuting petitioner for any contemptuous act. Rule P4 requires notice of the charges, time to prepare a defense, an opportunity to secure counsel, and the right to have another judge decide the case. There was simply no need to treat petitioner's charge differently from any other case where criminal charges are preferred. In the words of Mr. Justice Holmes:

> "I would go as far as any man in favor of the sharpest and most summary enforcement of order in court and obedience to decrees, but when there is no need for immediate action, contempts are like any other breach of law and should be dealt with as the law deals with other illegal acts." *Toledo Newspaper Co. v. United States,* 247 U.S. 402, 425-426 (1918).

II.

Petitioner was denied a fair and impartial tribunal because the member of the court who was offended by petitioner's conduct was also his judge.

The Supreme Court in *In Re Murchison*, 349 U.S. 133, 136 (1955) said:

> "A fair trial in a fair tribunal is a basic requirement of due process. Fairness of course requires an absence of actual bias. But our system of law has always endeavored *to prevent even the probability of unfairness.* To this end no man can be a judge in his own case and no man is permitted to try cases where he has an interest in the outcome . . . . This Court has said, however, that '*every procedure which would offer a possible temptation to the average man as a judge . . . not to hold the balance nice, clear and true between the State and the accused, denies the latter due process of law.*' *Tumey v. Ohio*, 273 U.S. 510, 532." (Emphasis added.)

In the case at bar, there was a distinct probability of unfairness. Judge Chasanow was offended by petitioner's failure to appear at the call of the 10:00 A.M. docket. When the case was called, petitioner's client tried to explain his attorney's whereabouts and ask for a continuance. Then Judge Chasanow said:

> "At this point it is a little late. *We will take care of Mr. Roberts when he gets here. In all probability we will be initiating contempt proceedings.*" (Emphasis added.)

Being offended, Judge Chasanow could not be truly impartial and fair. Due to the procedure inherent in summary contempt proceedings, the judge serves as accuser and prosecutor, judge and jury. Such procedure is fraught with the potential for unfairness and thus should be used rarely.

This Court has recognized the potential for abuse in exercising the summary power to punish for contempt—it is an "arbitrary" power which is "liable to abuse." *Ex Parte Terry*, 128 U.S. 289, 313 (1888). "(I)ts exercise is a delicate one and care is needed to avoid arbitrary and excessive conclusions." *Cooke v. United States*, 267 U.S. 517, 539 (1925). In the words of Justice Black:

> "(I)n contempt cases an even more compelling argument can be made for providing a right to a jury trial as a protection against the arbitrary exercise of official power. *Contemptuous conduct, though a public wrong, often strikes at the most vulnerable and human qualities of a judge's temperament. Even when the contempt is not a direct insult to the court or the judge, it frequently represents a rejection of judicial authority, or an interference with the judicial process or with duties of officers of the court.*" (Emphasis added.)

III.

The trial judge denied petitioner his constitutional right to make a defense by denying petitioner's motion to offer testimony to show that his actions did not interrupt the court.

Judge Chasanow denied petitioner's motion to take testimony of two police officers who were the state's chief witnesses against the defendant Mines. These witnesses did not appear in court until the afternoon of June 3, 1980 because they were unaware of the trial date. Petitioner asked these witnesses to furnish affidavits; but each witness refused. Their testimony would have proven that the state was not ready for trial, which was relevant to the issue of whether petitioner's actions actually disrupted the court's business. Judge Chasanow stated in the order of contempt that the state was ready to proceed with trial at 10:00 A.M. and that all parties and witnesses were present except petitioner. The Court of Special Appeals of Maryland agreed and stated: "When the case was called, everyone except appellant was present, so the case had to be continued." If petitioner had been afforded the opportunity to offer testimony of the two police officers into the record, it could have made a material difference in the state appellate proceedings. This evidence goes to the heart of petitioner's defense that Judge Chasanow lacked authority to exercise summary power because there was no actual interruption or disruption of the court's business.

To deprive petitioner of the right to produce this evidence in his defense amounted to a denial of his right to produce an accurate and complete record for appellate review. Violation of such right is a denial of due process.

CONCLUSION

In *Appeal of Levine*, 95 A. 2d 222, 232-233, 372 Pa. 612 (1952), Justice Jones in his dissent stated:

> "There are few offenses more odious than contempt of court. And, that is all the truer when the offender is a member of the bar whose sworn obligation specifically embraces the duty of conducting himself at all times with fidelity to the court. For the immediate and efficient redress of a contempt committed in the presence of the court, courts generally possess the inherent power to punish summarily for it. (Citations omitted.) But just as a court's power in such respect is great, so also is its responsibility for a proper exercise of the power commensurately heavy. And, as a contempt by an attorney is relatively more culpable than that of a layman, so also is its equal punishment when meted out to an attorney for contempt proportionately more severe. The judgment of guilt stands against him as a proven violation of his oath. It is of the highest importance, therefore, that a case such as this be scrutinized with special care."

There is another more important reason why a summary conviction of an attorney deserves special scrutiny. Punishment for contempt can result in discouraging vigorous advocacy by members of the bar. Petitioner agrees with an attorney who said:

> "(A) country with an intimidated bar is a country whose liberties are in danger. . . and I say, your Honor, with all due respect to your decision and judgment here that any threat to the integrity,

> independence and judgment of the bar can only constitute a threat to the integrity and wholesomeness and preservation of our civil liberties." *Sacher v. United States*, 343 U.S. 1, 17 n. 4 (1952) (Justice Black *dissenting, quoting* Mr. Sacher, Esquire).

Based on the foregoing, your petitioner respectfully requests this Court to grant his petition for certiorari.

Respectfully submitted,

s/ Terrell N. Roberts, III
Attorney Pro Se

APPENDIX

ORDER OF COURT OF APPEALS OF MARYLAND DATED JUNE 29, 1981

IN THE COURT OF APPEALS OF MARYLAND

Petition Docket No. 83

September Term, 1981

(No. 951, September Term, 1980 Court of Special Appeals)

TERRELL N. ROBERTS, III

v.

STATE OF MARYLAND

Upon consideration of the petition for a writ of certiorari to the Court of Special Appeals in the above entitled case, it is

ORDERED, by the Court of Appeals of Maryland, that the petition be, and it is hereby, denied as there has been no showing that review by certiorari is desirable and in the public interest.

/s/ Robert C. Murphy
Chief Judge

Date: June 29, 1981.

UNREPORTED OPINION OF THE COURT OF SPECIAL APPEALS OF MARYLAND FILED MARCH 2, 1981

IN THE COURT OF SPECIAL APPEALS OF MARYLAND

No. 951

September Term, 1980

TERRELL N. ROBERTS, III

V.

STATE OF MARYLAND

Wilner
MacDaniel
Orth, Charles E., Jr.
(Ret'd, Specially Assigned JJ.)

Per Curiam

Filed: March 2, 1981

Appellant Terrell N. Roberts, III, an attorney licensed to practice law before the Courts of this State, was attorney of record for a criminal defendant whose trial was scheduled to begin June 3, 1980, in the Circuit Court for Prince George's County. When Judge Howard S. Chasanow called the docket at 10 o'clock on the morning of the third appellant failed to appear. When appellant arrived a short time later Judge Chasanow conducted a hearing at the bench, found appellant in direct contempt of court and fined him fifty dollars. Pursuant to Rule P 3 of the Maryland Rules of Procedure the court's ruling was embodied in an Order signed June 6, and filed June 9, 1980.

Appellant filed motions to supplement the record and for reconsideration, but the motions were denied June 26, 1980. Appellant appeals the court's Order of Contempt and its denial of his motions subsequently filed.

The facts are these. Appellant, an attorney of record in the case of *State v. Todd Ricardo Mines*, filed one motion for continuance on May 9, 1980, and the motion was granted. Later that month the parties agreed to reschedule trial for June 3, 1980. However, within an hour after this trial date had been assigned appellant called the circuit court's assignment office to state that his secretary had mistakenly cleared that date, that he was already scheduled for trial on June 3rd in the Circuit Court for Anne Arundel County and, therefore, that he wished another assignment. The clerk informed appellant that a formal motion for continuance would be required. Accordingly, appellant filed a second motion for continuance in the case.

On or about May 26, 1980, Judge Chasanow informed appellant that the State had objected to a further continuance for fear of running afoul of Maryland Rule 746 (Trial Date.), and that appellant's motion for continuance would be denied. The trial judge suggested that he would reconsider appellant's motion only upon condition that appellant (a) obtain his client's signed waiver of the right to within the limits provided in Maryland Rule 746, or (b) that he first file a motion to obtain a continuance of his case then pending before the Circuit Court for Anne Arundel County. Appellant made no effort whatever to obtain a continuance of his case before the Circuit Court for Anne Arundel County. Although appellant wrote a letter to his client, Todd Ricardo Mines, to obtain a waiver of his rights under Rule 746, Mines did not reply. Nevertheless, appellant made no further effort to discuss the matter with the court prior to the day of trial. At approximately 9 a.m. on June 3rd

appellant's secretary called Judge Chasanow's chambers to advise him that appellant would be approximately one hour late. It happened that appellant's case was the first jury trial scheduled that morning in the Circuit Court for Prince George's County. It was to begin promptly at 10 a.m. When the case was called everyone except appellant was present, so the case had to be continued.

Appellant first contends the trial court erred in treating his late arrival as a direct contempt of court because, in determining whether appellant's late arrival was justified, it had to consider facts and circumstances which occurred outside the presence of the court. Therefore, he argues that at worst his conduct was only constructively, not directly, contumacious. He asserts that the court should have conducted its proceedings in accordance with Maryland Rule P4, governing constructive contempts. The contention is meritless. This precise question was raised in *Murphy v. State*, 46 Md. App. 138, *cert. denied*, October 10, 1980, where Judge Moore, speaking for this Court, held that "an attorney's unjustified failure to appear or to give reasonable notice thereof is a contempt committed in the presence of the court and, therefore, punishable summarily under Md. Rule P3." *Id.* at 149. Judge Moore also stated that "One must look to the nature of the alleged contemptuous acts to determine whether they occurred in the presence of the court. As the court made plain in *Roll and Scholl*, the resort to additional testimony does not indicate that a contempt is constructive; it is the contemptuous act itself which is determinative. *State v. Roll and Scholl, supra*, 267 Md. at 734, 298 A.2d at 879." *Id.* at 146.

Appellant's assertions to the contrary notwithstanding, we think our decision in *Murphy, supra*, is controlling. Appellant's conduct was directly contumacious, and the court's proceedings

on the matter were properly conducted in accordance with Maryland Rule P3. It was not required to proceed in accordance with Rule P4.

Appellant challenges the sufficiency of the evidence to support the trial court's finding, but having reviewed the record we hold that the evidence was sufficient to satisfy the standard of Maryland Rule 1086. Appellant has also challenged the trial court's denial of his motions to supplement the record and for reconsideration, but again, appellant has shown no clear abuse of discretion in the trial court's denial of these motions. We are therefore obliged to affirm the court's rulings on these motions. Maryland Rule 1086.

JUDGMENT AFFIRMED. APPELLANT TO PAY THE COSTS.

ORDER OF CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY, MARYLAND DATED JUNE 28, 1980

Equity No. 8764

IN THE MATTER OF: TERRELL N. ROBERTS, III

It is this *26th* day of June, 1980, by the Circuit Court for Prince George's County, Maryland.

ORDERED, that the Motion for Reconsideration be and hereby is denied, and it is further,

ORDERED, that the Motion to Supplement Record be and hereby is denied.

The movant has requested a reconsideration of the Court's decision in the above-captioned matter and has also requested a hearing on the motion. The Court feels that there is no need for any additional hearings to permit the movant the opportunity to offer testimony, since such testimony would not have any effect on the contempt citation. The fact that all of the state's witnesses might not have been present at 10:00 a.m. would not have prevented proceeding with the case, as there were other pre-trial and trial matters which could have taken place before the officers had arrived including motions, voir dire, and jury selection.

/s/
Judge Howard S. Chasanow

Copies sent by the Court this date to:

Terrell N. Roberts, III
5132 Baltimore Avenue
Hyattsville, Maryland 20781

/s/
Carol L. Carroll, Secretary

ORDER OF CONTEMPT OF CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY, MARYLAND DATED JUNE 6, 1980

In the Matter of:

TERRELL ROBERTS, III E-8764

It is this 6 day of June, 1980, by the Circuit Court for Prince George's County, Maryland,

ORDERED, that Terrell N. Roberts, III, Esquire, be and hereby is punished for contempt and fined Fifty Dollars ($50.00).

The facts known to the Court on it's own knowledge are that on May 9, 1980, Terrell N. Roberts, III, the attorney of record, filed a request for continuance in the case of State v. Todd Ricardo Mines (a copy of the motion and proposed order are attached hereto). This was the second request for continuance made by Mr. Roberts on the basis of a conflict in his schedule. In addition, the June 3rd trial date was selected with the express approval of Mr. Roberts and the Assistant State's Attorney assigned to the case. Upon receipt of the request for continuance, Mr. Roberts was contacted by my office to see if his client joined in the continuance request and if he did, whether he would sign a written waiver of any speedy trial rights and any possible Rule 746 violations for the period of time the case was continued. Mr. Roberts indicated to a member of my staff that he had been unable to contact his client and was unable to ascertain if his client would acquiesce to or join in the request for continuance and waive any speedy trial or Rule 746 violations during the period in which the case would be continued. The State's Attorney's Office was also contacted and they objected to the continuance because it was the second request for a continuance, and the State was anxious to go to

trial. I personally contacted Mr. Roberts telephonically on or about May 28, 1980. I informed him that the State was objecting to the continuance and since his client had not agreed to the continuance request, I was going to deny the continuance but I requested that he file a motion in Anne Arundel County to attempt to get a continuance in that case or in the alternative attempt to get his client's concurrence in the continuance with the understanding that such concurrence waives any speedy trial claim or Rule 746 violation during the period necessitated by the continuance. I further informed Mr. Roberts that if he was unsuccessful in continuing the Anne Arundel County case and unable to contact his client to secure his consent, he should renew his motion for continuance and I would re-evaluate the request, but that since he had agreed to the June 3rd date and the State objected to the continuance, he should at least file a motion for continuance in the Anne Arundel County case first.

The morning of trial, my office received a phone call from Mr. Roberts' secretary stating that Mr. Roberts would be at least one hour late. Mr. Roberts' secretary was unable to provide any reason why Mr. Roberts would be late or provide any further information. I am sure Mr. Roberts made no other attempt to contact me or my office to ask that the case be set later or to explain why he would be late, since someone is in my office and the phones are monitored from 8:00 a.m. to 5:30 p.m. each day.

The Todd Ricardo Mines case was the first jury trial scheduled in my courtroom and was to begin promptly at 10:00 a.m. Mr. Roberts was notified by the Assignment Office and knew that the case was scheduled for 10:00 a.m. The State's witnesses and the State's Attorney were in court and ready to proceed at that time. A jury panel was also available and Mr.

Order

Roberts' client was in court when the case was called at 10:00 a.m. The only participant missing was Mr. Roberts and he arrived sometime after 10:15 a.m.

Because this was the second or the third time Mr. Roberts was late appearing for a case before this member of the court without an excuse, and because the last time he was late he was warned that the next time he was late without justification he would held in contempt, a hearing was held to determine if Mr. Roberts had any justification, and if he had none, what action the court should take. I determined that Mr. Roberts' failure to appear on time was without justification, that he was in contempt, and assessed a Fifty Dollar ($50.00) fine as punishment. There was no irreconcilable conflict between the Mines case and the Anne Arundel County case since Mr. Roberts was asked to file a continuance in the Anne Arundel County case and if he was unable to get a continuance, he was told to renew his request to continue the Prince George's County case. He acknowledged that he had made no attempt to continue the Anne Arundel County case. Further, there was no compelling reason for Mr. Roberts to go to Anne Arundel County rather than to Prince George's County. Mr. Roberts acknowledged there was co-counsel in the Anne Arundel County case, that a plea had been worked out the day before the trial, there was no need for him to go to Anne Arundel County, and the sole purpose in going to Anne Arundel County was to make sure his co-counsel arrived on time. He further acknowledged that he never appeared at the Anne Arundel County hearing.

For these reasons, I determined that Mr. Roberts' failure to appear in court on time was unjustified and because it was the second or third time it occurred and because he had been previously warned, he should be punished for contempt and that

a Fifty Dollar ($50.00) fine was a reasonable penalty under the circumstances. A transcript of the proceeding is attached hereto and made a part hereof.

s/ Howard S. Chasanow
HOWARD S. CHASANOW,
Judge

Copy mailed to:

Terrell Roberts, III, Esquire

s/Eleanor S. Tall, 6/9/80
Eleanor S. Tall, Secretary

RELEVANT CONSTITUTIONAL PROVISIONS AND RULES

Amendment VI, United States Constitution

> "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been perviously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense."

Amendment XIV, Sec. I, United States Constitution

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Maryland Rules of Procedure

> "RULE P1. Definitions.
>
> a. *Direct contempt.*

A 'direct contempt' means a contempt committed in the presence of the court, or so near to the court as to interrupt its proceedings.

b. *Constructive Contempt.*

A 'constructive contempt' means a contempt which was not committed in the presence of the court, or so near to the court as to interrupt its proceedings.

c. *Defendant.*

'Defendant' means a person against whom contempt proceedings have been instituted."

"RULE P3. Direct Contempt.

a. *Summary Punishment.*

A direct contempt may be punished summarily by the court against which the contempt was committed.

b. *Order of Contempt.*

Where a direct contempt is committed, the court shall sign a written order to that effect. The order shall recite the facts, be signed by the judge and entered of record. The order shall state which of the facts were known to the court of its own knowledge and as to any facts not so known, the basis for the court's findings with respect thereto.

c. *Record.*

The record in such cases shall consist of

(1) such order of contempt,

(2) any affidavit filed by the defendant

(3) any affidavit filed by the State's attorney in support of the order of contempt, and

(4) any testimony offered."

"RULE P4. Constructive Contempt.

a. *Who May Institute.*

Constructive contempt proceedings may be instituted by the court of its own motion, by the State's Attorney or by any person having actual knowledge of the alleged contempt.

b. *Notice to Defendant.*

1. Show Cause Order.

(a) Issuance.

If the court determines to cite the defendant for contempt, it shall issue an order requiring the defendant to show cause why an order adjudging him in contempt shall not be passed within the time stated therein.

(b) Contents.

The show cause order shall state the time and place of hearing, allowing a reasonable time for the preparation of the defense, and shall state the essential facts constituting the contempt charged.

(c) Service.

The show cause order shall be served upon the defendant pursuant to Rule 104 (Service of Process — Generally) unless the defendant has appeared as a party in the action in which the contempt is charged, in which case service shall be in the manner prescribed by the court.

c. *Default — Answer.*

If the defendant shall answer, the charge shall be set for hearing. If no cause be shown within the time named in the order, tthe case shall be heard ex parte.

d. *Hearing.*

1. Appointment of Prosecutor.

The court may designate the State's Attorney or any other member of the bar to prosecute the proceeding.

2. When Judge Disqualified.

Unless a defendant otherwise consents, the judge who issued a citation for constructive contempt shall be disqualified from presiding at the hearing except where such contempt consists of failure to obey an order or judgement in a civil case."